

(Minutes of April 13, 2005 ADALB Meeting held in Boston, MA)

Present: Chairman Gilbert Cox

Members: Bruce King, Donald Spinelli, Stephen Tague and Joe Valarioti,

Attorney for the Board: Richard A. Cody

Secretary: Yvonne Torres

Approval of Minutes

Motion by Don Spinelli to accept minutes as written of prior meeting held on March 16, 2004. Seconded by Bruce King. Passed 3-0. Valarioti abstained.

Report on licenses

Richard Cody reported:

5,117 Active Licenses

1 Temporary License (Todd E. Luzi – T00020)

7 Pending Renewal

201 new applications were processed and **0** applications waiting to be processed

60 individuals passed Part I and are scheduled to take Part II on 4/20/2005.

25 retakes for Part I

Informal Hearings -.

2004-02 Elias Akiki v. Gary West of AMICA Insurance Company

Present: Alias Akiki of Akiki & Sons, Gary West employed by AMICA, Sean P. Ford, AMICA and William Joseph Flanagan, Morrison, Mahoney representing AMICA.

This complaint was filed over disagreement of damages. The Board found no violations of 212. Don Spinelli moved to dismiss the matter; Stephen Tague seconded. 4-0 vote. Matter disposed.

2004-06 – Roger Walling v. Barry Copplestone

Present: Roger Walling, Barry Copplestone and Jeff Haigh representing Mr. Copplestone.

After discussing complaint and listening to both sides, Spinelli moves that the Board issue a written statement to all licensed appraisers recommending that they not demand a discount from list price unless otherwise addressed in the policy contract.

Seconded by Stephen Tague. Passed 4-0

Spinelli moves to dismiss complaint. Seconded by Tague.

Passed 2-1. Valarioti against. King abstained.

Meeting Dates

Wednesday, May 25, 2005

Wednesday, June 15, 2005

Wednesday, July 20, 2005

New Complaints

2004-08 – Complaint filed by Carol A. Walsh against Steve Giordano & Kevin Demers

Spinelli recuses himself from voting on this matter. Motion by Joe Valarioti that this matter be postponed for discussion at next meeting and that involved parties be notified.

Seconded by Cox. Passed 3-0

2004-09 – Complaint filed by Leonard D. Legere against Liberty Mutual appraisers.

Bruce King moves that that this matter go to informal hearing. Valarioti seconds. Passed 4-0

2005-01 – Complaint filed by Jessie Vieira, MetLife against Robert Powell
Spinelli recused himself from voting because Mr. Vieira is MetLife employee.
Valarioti moves to dismiss the complaint, Cox seconds. Passed 3-0

2005-03 – Complaint filed by Peter Chin against Brian Andrews
Valarioti moves to dismiss complaint; Spinelli seconds. Passed 4-0
Matter disposed

Topics of Discussion

Request by Michael P. Dwyer for reinstatement of his appraisers license. Motion by Spinelli to deny request; King seconded. Passed 4-0

Request by Steven DeCosta re: license renewal. Spinelli moves deny request.
Tague seconds. Passed 4-0.

Request for temporary license by Justin Kuncz. Valarioti moved to grant the 90 day temporary license upon receipt of \$50.00 fee. Passed 4-0

Request by Joseph F. Fusco for temporary license. Spinelli moves to postpone request and to schedule his appearance at the next meeting. Valarioti seconds. Passed 4-0

Examination by Experior – Ms. Torres reported the following information at the request of the Board. For the dates of 10/4/2004 through 4/4/05 there were 108 exams were administered by Experior, 59 passed, 49 failed and 3 no shows. This resulted in 55% passing. There are a total number of 60 questions on the exam and 1 hr. is given to complete the examination. The passing score grade for all examinations is 70%. The report was accepted. 4-0.

Paint & Material ruling. Summary of discussion is attached.

Outline of Commerce discussion

On April 8, 2005 Attorney Peter McCue representing The Commerce Insurance Company requested a clarification of the Board's ruling on the use of Mitchell Refinishing Materials Calculator. The ruling came out of a complaint filed by Mr. John Stella of Center Auto Body Inc. against Mr. Ronald Burke, Mr. Steve Wilson, both of Wilson Associates and Mr. Cosimo Arrigo of the Safety Insurance Company. The issue was that Mr. Stella did not agree with Mr. Burke, Mr. Wilson or Mr. Arrigo on the dollars times hour rate that these gentlemen were offering Center Auto Body on a **"particular repair"**. Mr. Stella requested the use of the **Mitchell Refinishing Materials Calculator** which Mr. Burke and Mr. Wilson refused to use. This is a clear violation of 212 CMR 2.04 **"With respect to refinishing materials, if the formula of dollars times hours does not adequately reflect the cost of a particular repair a published Manual or other form of documentation shall be used"**.

The Board voted 3 to 0 in favor of Center Auto Body and found that Mr. Burke, and Mr. Wilson, were in violation of the regulation. No punitive action was taken against Mr. Burke or Mr. Wilson. The Board will send a copy of the advisory ruling on P&M with all 2005 License renewals.

Bullet points of clarification made to Mr. McCue at the April ADALB meeting:

- The Board made it clear that every licensed appraiser must comply with all appraiser laws and regulations.
- Mr. Burke and Mr. Wilson were found to have violated 212 CMR 2.04
- The Board decided not to take punitive action at this time. Instead we chose to use this violation as an opportunity to educate all licensed appraisers that the regulation is clear with respect to dollars times hour formula and the use of "a published manual" i.e. Mitchell Refinishing Materials Calculator.
- 212 CMR does speak to a **"burden of proof"** on the part of the repairer.
- The dollars times hour rate offered by Commerce and all other insurers is just that, **an offer**. Commerce has not offered any study of refinish materials cost, or proof that their \$15.00 paint hour rate is based in anyway on research. This is the same refinishing materials rate Commerce has been offering for at least eight years.
- The regulation with respect to refinishing materials speaks to the "list price" of refinishing materials, not the "repairers actual cost". Vehicles are not repaired wholesale the repairer is paid retail. The Repairers actual cost is proprietary.
- The Board is not "price fixing". The Board is enforcing the regulations.
- The Chairman closed the meeting with no further discussion.

ADALB BOARD MEEING – 4/13/05

Sign-In Sheet

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|-------------------|-------------------------------------|
| Richard Saura | Watson's Auto Body |
| Earl Pichering | Premier Insurance |
| Bill McDonough | Damage Report |
| Nancy Russell | Massachusetts Auto Body Association |
| Domenic Valarioti | Self |
| Dante Shovlin | Progressive |
| Justin Kuncz | Progressive |
| Don Cann | OneBeacon |
| Elias Akiki | Akiki & Sons Inc. |
| Jim Bates | Commerce Insurance |
| Jim Kaufman | Commerce Insurance |
| John Joyce | Commerce Insurance |
| Michael Payne | Commerce Insurance |
| Jim Callahan | Commerce Insurance |
| Joyce Richards | AMICA |
| Joe Flanagan | Morrison Mahoney |
| Sean P Ford | AMICA |
| Gary T. West | AMICA |
| Frank DeSario | Safety |
| Barry Copplestone | Heavy Equipment |
| Jeff Haigh | Brand & Assoc. |
| Tony Sampson | MABA Director – Sampson Auto Body |